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16 Hogan

17 **UNITED STATES DISTRICT COURT**
18 **DISTRICT OF ARIZONA**

19 Sean Bennett, an individual,

20 Plaintiff,

21 v.

22 City of Phoenix, a governmental entity;
23 American Airlines, Inc., a foreign
24 corporation; Officer Joel Cottrell and Jane
25 Doe Cottrell, a married couple; Officer
26 Benjamin Denham and Jane Doe Benham a
27 married couple; Officer Todd Blanc and
Jane Doe Blanc, a married couple; Officer
Peru and Jane Doe Peru, a married couple;
Sergeant Hogan and Jane Doe Hogan, a
married couple,

28 Defendants.

No. CV-23-02425-ROS-DME

**DEFENDANTS CITY OF
PHOENIX AND OFFICER
DEFENDANTS' RESPONSE TO
PLAINTIFF'S NOTICE OF
DISMISSAL**

29 Defendants City of Phoenix and Defendants Joel Cottrell, Todd Blanc, Rudolfo
30 Peru, and Ryan Hogan (the “Officer Defendants”) submit this Response to Plaintiff’s Notice
31 of Voluntary Dismissal. The Officer Defendants do not oppose the dismissal of the City of
32 Phoenix or Plaintiff’s state law claims. However, the Officer Defendants file this response to
33 clarify that the dismissal of these claims must be with prejudice.

1 Plaintiff's 42 U.S.C. § 1983 claims against the City are premised entirely on the
 2 doctrine of *respondeat superior*, which does not apply to create vicarious liability for a
 3 municipality. *See Monell v. Dep't of Soc. Servs. of City of New York*, 436 U.S. 658 (1978). Thus,
 4 because the City can never have vicarious liability for the § 1983 claims at issue in this case,
 5 dismissal must be with prejudice. *See, e.g., Buelna v. Dannels*, No. CV-21-00216-TUC-SHR, 2021
 6 WL 5013900, at *5 (D. Ariz. Oct. 27, 2021).

7 In addition, Plaintiff's state law tort claims against the City and the Officer
 8 Defendants are barred by the one-year statute of limitations for claims against public entities
 9 or employees, A.R.S. § 12-821, and fail to comply with Arizona's notice of claim statute, A.R.S.
 10 § 12-821.01. Because these defects cannot be remedied, dismissal on these grounds must also
 11 be with prejudice. *See Crick v. City of Globe*, 606 F. Supp. 3d 912, 918 (D. Ariz. 2022) ("[A]
 12 dismissal due to a failure to comply with the notice of claim statute is a dismissal 'with
 13 prejudice'"); *Copeland v. Ariz. Veterans Mem'l Coliseum & Exposition Ctr.*, 176 Ariz. 86, 88
 14 (App. 1993) ("Because the statute of limitations had expired in [the month before the court's
 15 order dismissing the action without prejudice], however, the order effectively dismissed the
 16 action with prejudice"); *Peters v. M & O Const., Inc.*, 119 Ariz. 34, 37 (App. 1978) ("[T]he statute
 17 of limitations had run and the trial court properly dismissed the action with prejudice").

18 DATED this 4th day of January, 2024.

19 JONES, SKELTON & HOCHULI, P.L.C.

20
 21 By /s/ Arcangelo S. Cella
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 26
 27
 28

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of January, 2024, I caused the foregoing document to be filed electronically with the Clerk of Court through the CM/ECF System for filing; and served on counsel of record via the Court's CM/ECF system.

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